sisterhood is powerful

AN ANTHOLOGY OF WRITINGS FROM THE WOMEN'S LIBERATION MOVEMENT

EDITED BY ROBIN MORGAN

RANDOM HOUSE · NEW YORK

DOES THE LAW OPPRESS WOMEN?*

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Introduction

Law is a reflection and a source of prejudice. It both enforces and suggests forms of bias. In earlier times, the United States Constitution blatantly described the black man as three-fifths of a man and the Supreme Court decided that black people did not qualify as "citizens." That black people have been thought of and treated as chattel is clear from a reading of the laws. An understanding of the attitudes toward women and the objective facts of women's oppression can similarly be found in an examination of the laws.

Sometimes, prejudices linger on long after corrective legislation is passed or decisions rendered—such as the 1954 Supreme Court (*Brown*) decision requiring desegregation of schools. Sometimes, oppressive laws remain on the books although public opinion has moved ahead of them—such as the abortion laws.

In the 1960's, most respected legal minds would, at least theoretically, profess the view that black people should be treated as citizens, as people, as equals, and not denied equal opportunity or equal protection under the laws. Not so for women! Goals, nature, and function are still very much in dispute. Technological advances, the economic structure, and the political situation have reached a point now, however, that permit women to examine the thinking in this area more carefully, and to analyze the supporting rationalizations and mythology.

In the following pages I touch on some of the legislation,

*This article is based on the outline of what will be the first law-school seminar on sex discrimination in U.S. history, to be taught by Diane B. Schulder at New York University.—Ed.

court decisions, administrative practices, and underlying rationale that support this discrimination.[1]

Civil Rights

Dr. Benjamin Spock was tried in June 1968 for conspiring to aid draft resistance. Would the case have been decided differently if he, a man of peace and the world's foremost baby doctor, had not been tried by an all-male jury? Leonard Boudin, his attorney, discovered that it had been the practice of the jury clerk in the federal court in Boston to take a list of the population, which is evenly divided between men and women, and to send jury eligibility questionnaires to approximately three times as many men as women.[2] Along the way, additional administrative hanky-panky led, eventually, to a very lopsided jury panel and, in this case, to a jury devoid of women. This practice (although in existence for years) had never before been challenged.

The law has never been partial to women serving on juries. The rule at Common Law was that juries were composed of "twelve good men." One exception was made, however: when a pregnant woman faced execution, a jury of twelve women was convened to decide whether she should be executed *before* or *after* giving birth to her child. (Some commentators add that a jury of twelve men was convened simultaneously, anyway, to stand by and make sure the women reached the right decision.)

To the present day, the United States Supreme Court has not ruled it unconstitutional for women to be excluded from a jury.[3]

In 1879, when the Supreme Court ruled it was unconstitutional to exclude Negroes from state juries, it hastened to add:

1. Space permits the presentation of selected examples only.
2. *U.S.* v. *Spock* (1968), Record at 456–474. See also, Brief of Defendant-Appellant, Spock, in United States Court of Appeals for the First Circuit, at 49ff.
3. But, *cf. White* v. *Crook,* 251 F. Supp. 401 (N.D. Ala. 1966).

> A state may prescribe . . . the qualifications of its jurors . . . *It may confine the selection to males,* to freeholders . . .[4]

In one of its more recent pronouncements on the subject, in 1961, the Supreme Court dealt with a Florida statute that allows women on a jury only if they go to the Courthouse and request to be put on a special list. The procedure for men is automatic. The number of women on the Florida juries had been, of course, negligible. The Court said:

> At the core of appellant's argument is the claim that the nature of the crime of which she was convicted peculiarly demanded the inclusion of persons of her own sex on the jury. She was charged with killing her husband by assaulting him with a baseball bat . . . The affair occurred in the context of a marital upheaval involving, among other things, the suspected infidelity of appellant's husband, and culminating in the final rejection of his wife's efforts at reconciliation. It is claimed, in substance, that women jurors would have been more understanding or compassionate than men in assessing the quality of appellant's act and her defense . . . [5]

The Court dismissed her pleas and upheld her conviction by an all-male jury. In this instance, the Court found it convenient to minimize differences between men and women (as jurors).[6]

Not mentioned in the opinion was a recent study by Professor Hans Zeisel of the University of Chicago showing that jurors do vote differently, based on whether they are old or young, black or white, men or women. The Court justified its ruling in the Florida case by saying that "woman is still regarded as the center of home and family life."[7]

4. *Stauder* v. *U.S.,* 100 U.S. 303 (1879), at 310.
5. *Hoyt* v. *Florida,* 368 U.S. 57 (1961), at 58.
6. Cf. *Ballard* v. *U.S.,* 329 U.S. 187 (1946). Therein, Justice Douglas, in a case finding exclusion of women in *federal* juries to be illegal although not unconstitutional, stated: "But if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel. The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both . . . " (at 193, 194).
7. *Hoyt* v. *Florida, supra,* at 62.

There are many other areas of civil rights that could be studied. Women are not covered in the public accommodations section of the Civil Rights Act nor does the law currently protect them from being discriminated against by schools or universities. A group of women law students at New York University Law School, as recently as 1969, had to petition their school to open the Root-Tilden scholarships, $3,500 yearly stipends which had formerly been restricted to "young men who showed promise of being outstanding members of the Bar."[8] Dorms, of course, are still segregated, and colleges pretend to be able to exercise much more authority over its women than its men students.[9] Needless to say, women did not secure the right to vote until the Nineteenth Amendment in 1920—sixty-five years after it had been granted to people of any race.[10]

Myths built up to perpetuate the inferior status of women and black people are similar:

> As in the Negro problem, most men have accepted as self-evident, until recently, the doctrine that women had inferior endowments in most of those respects which carry prestige, power, and advantages in society, but that they were, at the same time, superior in some other respects. The arguments, when arguments were used, have been about the same: smaller brains, scarcity of geniuses and so on. The study of women's intelligence and personality has had broadly the same history as the one we record for Negroes. As in the case of the Negro, women themselves have often been brought to believe in their inferiority of endowment. As the Negro was awarded his "place" in society, so there was a "woman's place." In both cases the rationalization was strongly believed that men, in confining them to this place, did not act against the true interest of the subordinate groups. The myth of the "contented

8. See The Women's Rights Committee, "Fair and Equal Treatment for Women at New York University Law School" (1969).
9. The *Linda LeClair* case, for example, would never have happened to a male student at Columbia University.
10. In many countries the fundamental right to vote is still withheld from women. See Kanowitz, "Sex-based Discrimination in American Law," 11 St. Louis L.J. 293 (1967) at 294.

woman," who did not want to have suffrage or other civil rights and equal opportunities, had the same social function as the myth of the "contented Negro."[11]

Employment

Presented below are some key quotes from a few of the older United States Supreme Court cases. I would like the reader to see the source material, and to experience the process whereby the Court's prejudices become ossified into law and practice. Judges in those days were most honest, direct, and expansive about expressing their prejudices. *Moreover, the Supreme Court has not since overruled itself as to rights due women under the United States Constitution.* Some lower courts have ruled otherwise.[12] Legislation has improved. But practice remains.

As with many of the pernicious laws relating to women, judges explain their reasoning as being "protective" of women. In 1908, in upholding an hour-limitation statute for working women, the Supreme Court stated:

> That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity, continuance for a long time on her feet at work, repeating this from day to day, tends to injurious effects upon the body, and, as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.
>
> Still again, history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, and this control in various forms, with diminishing intensity, has continued to the present.

11. Jan Myrdal, *An American Dilemma*, cited in Eastwood and Murray, "Jane Crow and the Law, Sex Discrimination and Title VII," 34 Geo. Wash. L. Rev. 232 (1966), at 234.

12. See, e.g., *Rosenfeld* v. *Southern Pacific Co.*, 37 LW 1089 (Cent. D. Cal., 1968).

> As minors, though not to the same extent, she has been looked upon in the courts as needing especial care that her rights may be preserved. Education was long denied her, and while now the doors of the schoolroom are opened and her opportunities for acquiring knowledge are great, yet even with that and the consequent increase of capacity for business affairs it is still true that in the struggle for subsistence she is not an equal competitor with her brother. Though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights . . . looking at it from the viewpoint of the effort to maintain an independent position in life, she is not upon an equality . . . she is properly placed in a class by herself . . . It is impossible to close one's eyes to the fact that she still looks to her brother and depends upon him. Even though all restrictions on political, personal, and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to him for protection: that her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man. The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit, but also largely for the benefit of all . . .
>
> We have not referred in this discussion to the denial of the elective franchise of the state of Oregon, for while that may disclose a lack of political equality in all things with her brother, that is not of itself decisive. The reason runs deeper and rests in the inherent difference between the two sexes, and in the different functions in life which they perform.[13]

In 1948, the Supreme Court reaffirmed its protective approach, in not allowing a woman to be a bartender unless she was "the wife or daughter of the male owner." The Court explained:

> The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in vices that men have long practiced, does not preclude the

13. *Muller* v. *Oregon*, 208 U.S. 412 (1908), at 421–423.

> states from drawing a sharp line between the sexes, certainly in such matters as the regulation of liquor traffic. *The Constitution does not require legislatures to reflect sociological insight, or shifting social standards, any more than it requires them to keep abreast of the latest scientific standards.*[14]

In 1963, many Congressmen tried to block the Equal Pay Act, the purpose of which was to give people, regardless of sex, equal pay for equal work. In 1964, when Congress was debating Title VII of the Civil Rights Act, forbidding discrimination in hiring, certain Southern Congressmen decided on a tactic to defeat the entire bill—add a clause prohibiting discrimination because of "sex" as well as a clause prohibiting discrimination because of "race"! Real supporters of women's rights opposed the amendment, in an effort to save the bill. Congressmen, generally, considered it some sort of obscene joke.[15]

In a polite understatement as to the present over-all condition of women and employment, the Committee on Private Employment of the President's Commission on the Status of Women noted:

> Although women in the work force have a somewhat higher-than-average schooling than men, they, more generally than men, work in jobs far below their native abilities or trained capabilities. Barriers to women's employment and to their occupational progress generate feelings of injustice and frustration.[16]

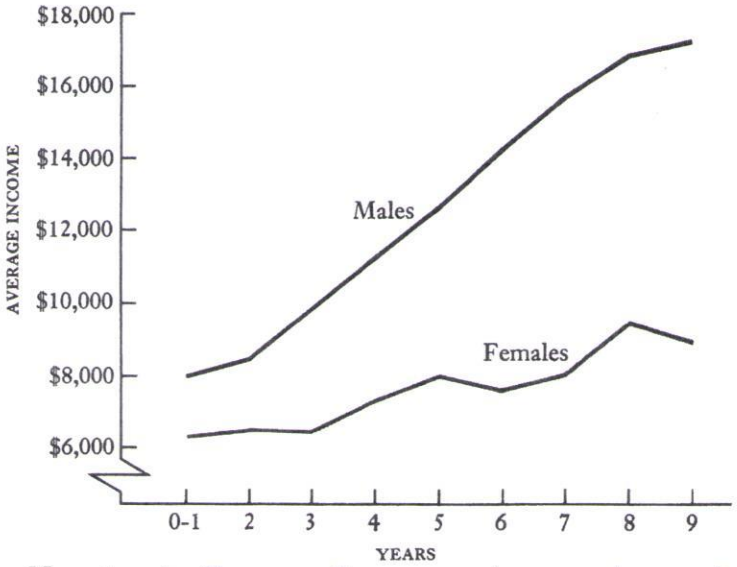
The recently established Equal Employment Opportunity Commission should not have been surprised (as it was) to find that at times 50 percent of the complaints it received were from women.[17]

14. *Goesart* v. *Cleary,* 335 U.S. 464 (1948), at 466 (italics mine).
15. See Caroline Bird, *Born Female, or The High Cost of Keeping Women Down* (New York: David McKay, 1968), chapter 1.
16. President's Commission on the Status of Women, *Report of the Committee on Private Employment* (1963).
17. Caroline Bird, *Born Female*, pp. 205–206, 268. Her information comes from various newspaper articles and the *First Annual Report* of the Equal Employment Opportunity Commission, House Document No. 86, for the year ending

Recently, a study was conducted of all women law school graduates of the years 1956–1965.[18] Approximately half of the women stated that they had been the object of discrimination by employers. Average income differed sharply, based on sex:[19]

PRESENT INCOME

(Average income in 1964, by Years Since Graduation)



How has the Supreme Court treated women lawyers? In an opinion that might sound to some like a parody of sexism written by the Women's Liberation Movement, the Court upheld state legislation barring women from the practice of law.

A married woman from Illinois attacked the state law that forbade her from practicing law, and the Supreme Court answered her thusly:

June 30, 1966.

18. White, "Women in the Law," 65 Mich. L. Rev. 105 (1967) at 1068.

19. White, *ibid.*, 1055. Contrary to expectation, full-time employed married women earned significantly more money than did the unmarried women. White, *ibid.*, 1067. Reprinted by permission of Professor James J. White.

The claim of the plaintiff, who is a married woman, to be admitted to practice as an attorney and counselor-at-law, is based upon the supposed right of every person, man or woman, to engage in any lawful employment for a livelihood. The Supreme Court of Illinois denied the application on the ground that, by the common law, which is the basis of the laws of Illinois, only men were admitted to the bar . . .

The claim that (under the Fourteenth Amendment of the Constitution, which declares that no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States) the statute law of Illinois, or the common law prevailing in that state, can no longer be set up as a barrier against the right of females to pursue any lawful employment for a livelihood (the practice of law included), assumes that it is one of the privileges and immunities of women as citizens to engage in any and every profession, occupation, or employment in civil life.

It certainly cannot be affirmed, as an historical fact, that this has ever been established as one of the fundamental privileges and immunities of the sex. On the contrary, the civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head and representative in the social state; and, notwithstanding some recent modifications of this civil status, many of the special rules of law flowing from and dependent upon this cardinal principle still exist in full force in most states. One of these is, that a married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him. This very incapacity was one circumstance which the Supreme Court of

> Illinois deemed important in rendering a married woman incompetent fully to perform the duties and trusts that belong to the office of an attorney and counselor.
>
> It is true that many women are unmarried and not affected by any of the duties, complications, and incapacities arising out of the married state, but these are exceptions to the general rule. ***The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother.*** This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.
>
> The humane movements of modern society, which have for their object the multiplication of avenues for woman's advancement, and of occupations adapted to her condition and sex, have my heartiest concurrence. But I am not prepared to say that it is one of her fundamental rights and privileges to be admitted into every office and position, including those which require highly special qualifications and demanding special responsibilities . . . in my opinion, in view of the peculiar characteristics, destiny, and mission of woman, it is within the province of the legislature to ordain what offices, positions, and callings shall be filled and discharged by men, and shall receive the benefit of those energies and responsibilities, and that decision and firmness which are presumed to predominate in the sterner sex.
>
> For these reasons I think that the laws of Illinois now complained of are not obnoxious to the charge of abridging any of the privileges and immunities of citizens of the United States.[20]

Twenty-two years later, a Miss Belva Lockwood was denied entry to the bar in Virginia. In its opinion this time, the Supreme Court decided that it is reasonable for a state court to find that a "woman" is not a "person":

> It was for the Supreme Court of Appeals to construe the statute of Virginia in question, and to determine whether the word "***person***" as therein used is ***confined to males***, and whether women are admitted to practice law in that Commonwealth. Leave denied.[21]

20. *Bradwell* v. *Illinois,* 83 U.S. (16 Wall) 130 (1872), at 140–142.
21. *In re Lockwood*, 154 U.S. 116 (1894), at 117 (italics mine).

Marital Relationship

In 1966, a bank in Texas got a raw deal. The Supreme Court found fit to uphold the Texas law providing that a married woman did not have the capacity to enter into a binding contract (and, therefore, the bank could not collect the $4,-000 she had promised to pay it).

In a dissenting opinion, Justice Black stated:

> The Texas law of "coverture" . . . rests on the old common-law fiction that the husband and wife are one. This rule has worked out in reality to mean that though the husband and wife are one, the one is the husband. This fiction rested on what I had supposed is today a completely discredited notion that a married woman, being a female, is without capacity to make her own contracts and do her own business . . . It seems at least unique to me that this Court in 1966 should exalt this archaic remnant of a primitive caste system to an honored place among the laws of the United States.[22]

Can a woman keep her own name upon remarrying? It seems that in some places she can if she has her husband's permission, but an Illinois court, in 1945, refused to let a woman vote in her maiden name, holding:

> The facts that a married woman practiced law for some years, became widely known as an attorney in her neighborhood, took active part in political activities thereof, was admitted to practice in various courts, and had certificates issued to her in her maiden name, were irrelevant on question of her statutory duty to cancel her registration under such name and reregister in her husband's surname in order to preserve her right to vote.[23]

Additionally, the Common Law tradition of loss of her legal personality when a woman marries, has raised, among others, the issues of right to a separate domicile; capacity to sue and be sued; change in citizenship upon marriage to an alien, cause of action for "loss of consortium" to one spouse only. Today, controversies center around men claiming to be discriminated against in the laws of alimony and child

22. *U.S.* v. *Yazell*, 382 U.S. 341 (1966), at 361.
23. *Peo* v. *Lipsky*, 327 Ill. App. 63, 63 N.E. 2d 642 (1945).

custody. "My wife sued to divorce me, and I had to pay for her lawyer!" complained a man recently. (There seems to be a trend among young women today not to request alimony if they can possibly afford not to.) Rights and obligations in marriage are currently under serious reconsideration.[24] Whether it is fair, or even wise—for children, husband, and wife—that the woman have complete responsibility as caretaker of the children is also being reconsidered.[25]

A supposed breakthrough was made in French law in February 1966, after heated debate. As a result of this new French law, "a wife, without asking the permission of her husband, can take a job or open a checking account. The husband can no longer simply choose housing without consulting his wife, nor make all the decisions about the children's education."[26]

Changes in the law cannot take place without changes in societal structure.[27]

Welfare Law

> " . . . we have two systems of family law . . . different in origin, different in history, different in administration, different in orientation and outlook."—one for the rich and for the poor.[28]

One of the most flagrant abuses in recent years has been the searching of homes to find out if a welfare mother was having a sexual relationship and, if she was, then cutting her off welfare. The rule came to be known by various names,

24. Sayre, "A Reconsideration of Husband's Duty to Support and Wife's Duty to Render Services," 29 Va. L. Rev.857 (1943); Paulson, "Support Rights and Duties Between Husband and Wife," 9 Va. L. Rev. 709 (1956).
25. See Philip Roth, *Portnoy's Complaint* (New York: Random House, 1969).
26. *New York Times*, 2 February 1966. For n 65–570 due 13 Juillet 1965, [1965] J. O. 6044 (1); Recueil Dalloy Sirey, 31 Aoút 1965, p. 233; effective on February 1, 1966.
27. For a brilliant discussion of how women's roles change in the course of revolutionary struggle, see Frantz Fanon's *Studies in a Dying Colonialism* (New York: Grove Press, 1967).
28. Ten Broek, "California's Dual System of Family Law," 16 Stan. L. Rev. 257 (1964).

such as "substitute father" or "man in the house" rule. There was never, of course, any "woman in the house" rule. Raids to check out the situation were conducted as follows:

> Much more generally used than mass arrests are night calls, popularly known as "night raids," "bed checks," and "operations week-end." They may be made at the home of only one recipient but often they are a mass operation. The purpose is usually to determine whether there is an unreported man in the home of the recipient—whether he be husband, father, stepfather, or man assuming the role of spouse—whose presence may, on the one hand, determine eligibility or the amount of the grant, and on the other hand constitute an element in the crime of welfare fraud or theft. Such calls are frequently made between 10:00 P.M. and 4:00 A.M. The normal procedure is this: Investigators working in two-man teams approach the front and back of the house simultaneously and ring the doorbell; the investigator identifies himself, asks to be admitted, not specifically to look for a man or to make a routine check of the conditions of the home and the children; once inside, the investigator admits his partner and the two then conduct a minute search of the house looking into the children's and mother's bedrooms, in and under the beds, the attic, cellar, shower, closets, drawers, and medicine chest, searching for a man or evidence of his presence. Adults and children in the home are interviewed, notes taken, and sometimes signed statements are secured without explanation of their intended use.[29]

In the case which finally destroyed the "substitute father" theory rule,[30] a lawyer representing a welfare mother questioned a case-work supervisor:

> Q: Now, the regulation provides: " . . . though not living in the home regularly, he visits frequently for the purposes of cohabiting." What is your understanding of what the term "regularly" means in that provision?
>
> A: Well, I think it means on a continuing basis.
>
> Q: In other words, though not living in the home, on a continuing basis?

29. Ten Broek, "California's Dual System of Family Law, 17 Stan L. Rev. 257 (1965) at 667, 668.

30. This rule (which operated to deprive indigent women of a sex life), deems the men with whom she is fucking to be her children's "father" (although he is not). Ergo, he has to support them. Ergo, they are cut off welfare.

A: Yes.

Q: If a man is not living in a home on a continuing basis, but visits the house once a month for the purpose of cohabiting, is that, so far as your understanding of the regulation, sufficient to be presumptive evidence of a substitute father?

A: Well, I think it would depend upon the intent of the persons involved, whether they intended to have a continuing relationship or not.

. . .

Q: How would you go about finding this out? . . .

A: Well, I think that the worker would talk with the mother and also with the father if it were indicated.

Q: What kind of questions would be asked?

A: Well, how she felt about the man, what her intentions were, whether she intended to keep on with her relationship, or whether it was just a casual thing, or whether it had meaning.

. . .

Q: Assuming, now, that the mother and the substitute parent said that, although they cohabited only once every two months, they intended to do this on a permanent basis: would that be a basis for a *prima facie* presumption that the substitute parent rule should apply?

A: . . . we never have had an actual case that I can recall where they said it was once a month; but I assume that if it were considered permanent, as you say, that it would be considered a substitute parent.

Q: And that would be irrespective of whether the sexual relationship was in the home or outside of the home—is that right?

A: Yes.

Q: And so, if parties engaged in sexual relations once every two months outside of the home, but told you that they intended to continue to do this, it would be sufficient to warrant that they be denied aid under the regulation?

A: Now, do you mean with the same man, or do you mean different men?

Q: With the same man.

A: I would think that they would consider that—

Q: —*prima facie*—

A: —a marital relationship, if they continued to do this.

Q: Would your answer be the same if it were once every four months, and if the woman and the substitute parent told you that they intended to have these sexual relationships once every

four months?—would that be sufficient *prima facie* proof to deny aid?

A: I believe I would have to call the State Department on that and see what they say about that.[31]

Criminal Law

Legislation and case law still exist in some parts of the United States permitting the "passion shooting" by a husband of a wife;[32] the reverse, of course, is known as homicide. Italy, on December 20, 1968, abolished a law under which a woman could be jailed for adultery for one year, while her husband could be unfaithful with impunity.[33] On December 12, 1968, the United States Supreme Court considered the case of a girl who was imprisoned for "lascivious carriage." It considered the constitutionality of a 1905 Connecticut law authorizing imprisonment of young women if they are "in manifest danger of falling into habits of vice or leading a vicious life.[34] Thus, we see sex discrimination in the very definition of crimes.[35] Laws also exist providing for different lengths of jail sentences for the same crime, de-

31. See *King* v. *Smith*, 329 U.S. 309 (1968). The above questioning was in a deposition taken on March 9, 1967. Martin Garbers, Esq., is questioning Jean M. Johnson, casework supervisor of Aid to Dependent Children in Dallas County.
32. See, N.M. Stat. Ann. sec. 40A–2–4(7) (Repl. 1964); Texas Penal Code art 1220 (Vernon's 1961); Utah Code Ann. sec. 76–30–10 (5) (1953); *State* v. *Williams*, 47 Utah 320, 168 pll04 (1917). See also the film *Adam's Rib.*
33. *New York Times*, 20 December 1968.
34. See *New York Times*, 12 December 1968.
35. The criminal prosecution of witches is not very common today, but it was at one time, and there are many volumes of legal writing on the subject. Why were most of the convicted witches women? Is it because religious and political heresy, or even independence of opinion, is less to be tolerated in women than men? Some groups are now researching the proposition that witches were actually early women revolutionaries. A book written in England in 1680 by Sir Robert Filmer would seem to support this conclusion. The book is entitled *The Freeholders Grand Inquest*. Its summary includes a review of the following subjects: Observations upon forms of Government; Directions for obedience to governors in dangerous and doubtful times; Observations on Anarchy; An advertisement to the jury-men of England, touching witches; Observations upon: Aristotle's *Politiques*, Hobbes's *Leviathan*, Milton against Salmasius, Grotius, *De Jure Belli & pacis*; The Anarchy of a limited or mixed Monarchy; A difference between an English and Hebrew witch.

pending on whether the perpetrator is male or female.[36]

More studies are needed in the area of criminal law and criminology to determine why some crimes are committed more often by men (e.g., violent crimes, shootings) and other crimes by women (e.g., shoplifting). Studies should also be conducted concerning comparative treatment inside jails. A counselor working with imprisoned women drug addicts told me recently that it is much more difficult working with female prisoners, partly because it is less possible to train them for work after release that would pay reasonably well. A woman confined for three years at one of these "rehabilitation centers" wrote to me on June 21, 1968:

> On May 27, 1968, I *volunteered* to Manhattan Rehabilitation Center [a center for drug addicts] . . . I volunteered to this program under the assumption that I would receive professional psychiatric and medical care at all times. I have found, much to my disappointment, that I receive very little medical care and no psychiatric treatment whatsoever.
>
> I have also found myself locked up in a building that was condemned by the Fire Department as a fire hazard.
>
> As a mere drug user, I understand I am legally considered "sick," yet here I am treated as a hardened criminal.
>
> For many reasons I feel this Center would be detrimental, not supplemental, to my health.[37]

In the area of sex and reproduction, the law has an effect on women more directly than on men. In many states, dispensing birth-control information is a crime. Thus, Bill Baird, for example, faced five years in jail in Massachusetts, for handing someone a can of "contraceptive" foam. Under recent New York abortion laws, a person who performed an abortion on another was guilty of a felony, and a woman who submitted herself to an abortion was guilty of a misdemeanor.[38] The abortion Statutes are in a section of the

36. See *Commonwealth* v. *Daniels*, 37 L. W. 2064 Pa. Sup. Ct. 7/1/68 (reversing L.W. 2004).

37. Letter to Diane B. Schulder, Esq. (italics mine) See also Father Daniel Egan S. A., *The Junkie Priest* (New York: Pocket Books, 1965), for a description of the life of drug addiction and prostitution.

38. N. Y. Penal Law, Section 125.40. The only exception was when it was neces-

New York Penal Law entitled "Homicide, abortion, and related offenses."

One of the areas where the criminal law operates most discriminatorily relates to prostitution. In New York City, policemen actively entrap women and then charge them with prostitution. A defendant (who was acquitted) testified to a typical example:

> He came up behind me first and asked me was I going out, and I really didn't have too much to say to him at first, and then he started walking alongside me and we both started a small conversation, and I told him that he looked like a police officer, and he told me that he wasn't, he was a shoe salesman or something from Minnesota, and he showed me some identification . . . It was like a name tag with a plastic covering over it or something. He took it out of his jacket pocket. He was wearing a suit and carrying a valise . . . Then there was a lot of other small talk and then he told me that he was spending twenty dollars . . .[39]

The officer testified:

> I hailed a cab and we got into the cab, and she said, "Driver, go along Seventh Avenue," and as we drove away I said to the driver, "Forget about that, driver, take me to the 18th Precinct."[40]

A directive was issued, not too long ago, to policemen in New York City not to entrap male homosexuals; no such relating to female prostitutes. Nor, of course, do policewomen in disguise try to entrap businessmen seeking to exploit the indigent women who walk the streets.

In a recent pronouncement, a Criminal Court judge characterized the women prostitutes as "hardened criminals"

sary to save the mother's life.

39. Trial Transcript, *Peo* v. *Dixon*, trial in N.Y. Criminal Court, Part 1C, on July 18, 1968, at p. 14ff.

40. *Peo* v. *Dixon, supra,* at 3. Policemen often testify in court that women approach them and ask, "Do you want to get laid?" This is often a lie, used to secure a conviction, and frequently judges will close their eyes to this tactic. There have been speculative rumors, as well, that some vice squads participate in vice with their arrestees.

and said "one could not equate their activity with that of their customers."[41] This, despite the fact that New York law states that prostitutes and their customers are guilty of equal violations.[42] The New York District Attorney's office has also chosen not to prosecute the men customers.[43] Both deterrence and fairness, however, would be served if this were done. In another country, a strikingly successful campaign in the suppression of prostitution was carried out as follows:

> Whenever officers raided a place of vice—whether it was a house, a tavern, or simply a dark street—they were to take down the names, addresses, and place of employment of all men found there. The customers were not to be arrested. But on the following day, and for a specified period, those men would have their names and identifying information posted in a public place, under the heading "Buyers of the Bodies of Women." These lists were to be prominently displayed outside public buildings or on factory bulletin boards.[44]

Other countries, such as England, have legalized prostitution.[45] As has been suggested before (but not practiced), "The stigma and consequence of crime must . . . be either removed from the woman or affixed to the man."[46]

Conclusion

Thus, prejudice (the mythology of class oppression) is ensh-

41. *New York Times*, 27 January 1968.
42. N.Y. Penal Law, Sections 230ff. The New York law making it an equal offense for the man who participates was added in 1967. The stated purposes of this new addition are "deterrence" and "fairness."
43. An attorney friend of mine noted recently that if the police were too successful in deterrence, big business conventions would cancel out of New York City and go elsewhere.
44. Carter, *Sin and Science* (1945) at 56–57, describing action in the Soviet Union.
45. Another judge in the New York Criminal Court believes this is the proper solution. See *New York Times*, 27 January 1969.
46. Abraham Flexner, *Prostitution in Europe* (New York: Century Co., 1914), p. 103. As Flexner says (p. 107): " . . . as a matter of history, no proposition aiming at punishment of prostitution has ever involved both participants. The harlot has been branded as an outcast and flung to the wolves: she alone,—never the man, her equal partner in responsibility."

rined in laws. Laws lead to enforcement of practices. Practices reinforce and lead to prejudice. The cycle continues . . . Women who feel oppressed, women involved in the fight for women's liberation, are not paranoid. Their feelings of oppression are not imaginary. Indeed their oppression, in more areas than generally realized, is built into the law.